

**REMARKS**

The Office action dated October 9, 2007, and the references cited have been fully considered. In response, please enter the amendments and consider the remarks presented herein. Reconsideration and/or further prosecution of the application is respectfully requested.

Applicants appreciate the thoughtful examination of the application, including fully considering the references cited to the Office, as well as those references it discovered.

Applicants appreciate the Office determining that dependent claims 6 and 7 would be allowable if re-written in independent claim format.

In regards to the claim amendments, Applicants have re-written original dependent claim 12 in independent claim format by incorporating its limitation into original independent claim 11; have re-written original dependent claim 19 in independent claim format by incorporating its limitation into original independent claim 18; and cancelled claims 12 and 19. Other claim amendments are discussed *infra*.

In regards to the § 112 rejections, Applicants appreciate the careful reading of the claims and for the suggestions, and Applicants believe the amendments presented herein render the issues raised by the Office as being moot.

First, claims 12-14 have been amended per the Office's suggestion (with claim 12 being cancelled, but its limitation(s) added to claim 11). Applicants note that the offensive claim language was a exact copy of that element of the independent claim to which it is referencing (i.e., "said identifying...") so Applicants do not believe it was confusing, but Applicants are happy to comply with the Office's desires and to render the issue moot.

Next, Applicants appreciate the notification of the typographical error in claim 17, as it should depend from claim 16, which provides the proper antecedent basis for its limitations. Applicants have also amended "a third" to be "the third" to be consistent with the Office's preferences discussed *supra*.

Next, claim 19-20 have been amended as discussed in relation to claims 12-14 (with claim 19 being cancelled, but its limitation(s) added to claim 18).

Finally, claim 20 (as well as claim 13) has been amended to change "a detector" to "the detector".

Applicants believe that all pending claims comply with 35 USC § 112, and therefore, Applicants respectfully request all § 112 rejections be withdrawn.

In regards to the claim rejections based on prior art, Applicants respectfully traverse the rejections of independent claim 1 and its dependent claims 2-5 and 8-10. Again, Applicants appreciate the Office determining that claims 6 and 7 would be allowable if re-written in independent claim format.

Remember, it is well-established law that the burden is on the Office to initially present a *prima facie* unpatentability (e.g., anticipation, obvious) rejection, before Applicant has any burden of proof of disproving any application of a cited reference against a claim. *In re Warner*, 379 F2d. 1011, 1016, 154 USPA 173, 177 (C.C.P.A. 1967); *Ex parte Skinner*, 2 USPQ2d 1788, 1788-89 (B.P.A.I. 1986). The MPEP and law is clear that for anticipation, the reference *must teach each and every aspect of the claimed invention* either explicitly or impliedly, and the burden is on the Office to present a *prima facie* case of anticipation. MPEP § 706.02 (emphasis added). Inherent means it *must* occur. The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP § 2112 (*emphasis in original*).

Turning to claim 1, the plain language of the claim requires that the first protector is configured "to register with the detector to be notified of the condition." Also, the detector is configured "to notify the first protector of the condition upon detection of the condition." Therefore, the claim requires, *inter alia*, the first protector is configured to take the action of registering with the detector. The Office action relies on col. 15, lines lines 29-35 of Finn et al., US Patent 6,728,205, for this teaching, which are produced immediately below:

"In this case, APS processor 14 receives information concerning the number of nodes which will be eventually included in the network or subnetwork as well as information concerning the availability or desirability of installing and/or maintaining network links between particular nodes, traffic load and cost information with respect to installation and maintenance of the links and nodes, etc . . . . "

Finn et al. continues from there:

"In response to the information provided to APS processor 14, APS processor 14 computes pairs of tree topologies for each source-node/destination-node pair in the network. APS processor 14 then designates preferred links 20 between each of the network nodes 12a-12e in accordance with the computed tree topologies and any other rules provided thereto.

Once the preferred network topologies and paths between each of the nodes 12a-12e are computed, the path information is stored in a routing table 16. Routing table 16 has stored therein a particular primary order and a particular secondary order of switching entities and links which define primary and secondary paths between the nodes 12a-12e and which are part of primary and secondary tree topology network configurations. Thus, each source node is provided having a primary path and a secondary path to every other node 12 in the network. Moreover, since the primary and secondary paths are provided as

part of primary and secondary tree topologies, multicasting and/or incasting can be implemented relatively easily within the network."

Finn et al., col. 15, lines 36-56.

Applicants submit that Finn et al. neither teaches nor suggests the limitation of the first protector being configured to take the action of registering with the detector. Rather, it teaches that the topology is processed to determine the preferred paths for distributing the information, with this information being populated among the nodes. A proper rejection requires a teaching of all limitations of a claim. As Finn et al. operates fundamentally differently than the apparatus recited in claim 1, Applicants respectfully submit that the Office has failed to establish a proper *prima facie* rejection of independent claim 1 and its dependent claims 2-5 and 8-10, and therefore, respectfully request these claim rejections be withdrawn.

Note, Applicants further traverse the rejections of dependent claims 5, 8, 9 and 10 as they further recite registration limitations. Also, Applicants further traverse the rejection of dependent claim 2 as the Office fails to address all recited limitations, and col. 15, lines 10-13 relied upon by the Office fails to teach all recited limitations.

In regards to the two remaining claim sets, Applicants have re-written original dependent claim 12 in independent claim format by incorporating its limitation into original independent claim 11; have re-written original dependent claim 19 in independent claim format by incorporating its limitation into original independent claim 18. Applicants respectfully traverse the rejection of these claims. The Office relies on col.3, lines 26-32 of Lindskog et al., US Patent 6,665,262, for the teaching the limitation of "attempting by the first protector to protection switch, and in response to failure of said protection switch, to notify the second protector of the particular condition." This corresponding paragraph of Lindskog et al. is reproduced below:

"As faults are detected in the communications network, alarms are sent from one node to the next by the fault agents that reside in the various nodes. In

particular, when a fault agent receives alarm data, either from a subordinate fault agent or from a network resource, the fault agent analyzes the received alarm data to identify a cause of the alarm and to determine if the underlying fault that caused the alarm can be handled at the current node. If not, then the fault agent produces a new alarm, which summarizes the received alarm data, and passes the new alarm to an interconnected fault agent."

Lindskog et al., col. 3, lines 24-35.

Applicants respectfully traverse the rejection as the claim requires the attempted protection switching by the first protector, and in response to a failure of such, to notify the second protector. In contrast, Lindskog et al. neither teaches nor suggests attempting to protection switch, rather it analyzes the received alarm data to determine whether it should be handled at the current node, and if not, produces a new alarm and sends it to an interconnected fault agent. Lindskog et al. neither teaches nor suggests attempting to protection switch, and in response to a failure, notifying the second protector of the particular condition as recited in independent claims 11 and 18.

Note, Applicants have added new claims 23 and 24 to depend from independent claim 11, with these claims reciting the registering limitation described herein in relation to independent claim 1, and with support provided at least by original claims 1 and 5.

For at least these reasons, independent claim 11 and its dependent claim 13-17 and 23-24, and independent claim 18 and its dependent claims 20-22 are believed to be allowable.

For at least these reasons, Applicants all pending claims are believed to be allowable, and Applicant respectfully request all claim rejections be withdrawn.

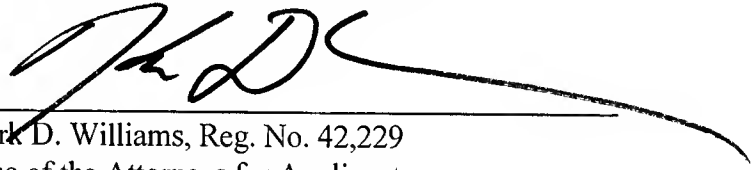
**Final Remarks.** In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over all prior art of record, the application is considered in good and proper form for allowance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. Applicant requests any and all rejections and/or objections be withdrawn. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney, as Applicants are open to discussing, considering, and resolving issues.

Applicants request a one-month extension of time is required. Should a different extension of time be deemed appropriate, Applicants hereby petition for such deemed extension of time. Applicants further authorize the charging of Deposit Account No. 501430 for any fees that may be due in connection with this paper (e.g., claim fees, extension of time fees) as required in addition to the payment made herewith using EFS-Web.

Respectfully submitted,  
**The Law Office of Kirk D. Williams**

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By



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